

Decision **PROPOSED DECISION OF ALJ HYMES** (Mailed on 1/26/2015)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Enhance
the Role of Demand Response in Meeting
the State's Resource Planning Needs and
Operational Requirements.

Rulemaking 13-09-011
(Filed September 19, 2013)

DECISION MODIFYING DECISION 14-12-024

Summary

This decision modifies Decision 14-12-024, the decision adopting a modified settlement to establish policies and guidelines that enhance the role of demand response in California. The adopted modifications amend the "settlement agreement" to be a "joint proposal." Additionally, today's decision adds a new ordering paragraph to address existing language in Decision 14-12-024 regarding a funding extension for the approved study on the potential of demand response in California. Two other minor typographical errors are also corrected.

Rulemaking 13-09-011 remains open to address outstanding issues.

1. Background

The Commission approved Decision (D.) 14-12-024 on December 5, 2014, approving a settlement agreement with modifications. The settlement agreement

was signed by most of the parties to the proceeding, jointly referred to as the Settling Parties.¹ Only Calpine Corporation protested the settlement agreement. Ordering Paragraph 2 of D.14-12-024 required the Settling Parties to file a compliance letter electing to either accept the modifications in the decision or request other relief.

Pursuant to Ordering Paragraph 2 of D.14-12-024, on December 22, 2014, the Settling Parties filed a letter (Compliance Letter) stating that the Settling Parties are not able to accept the modifications to D.14-12-024 but, as stated in the Compliance Letter, “to respect the sustained and conscientious work done and to preserve the process made in achieving the Agreement, its signatories are committed to moving forward in good faith to comply with the orders contained in D.14-12-024” and thus request other relief through modifications to D.14-12-024. Additionally, the Settling Parties request to be referred to as the Joint Sponsoring Parties.

The Administrative Law Judge (ALJ) issued a Ruling allowing parties who are not signatories to the December 22, 2014 compliance letter to file comments to the letter no later than Friday, January 9, 2015.² Calpine Corporation timely filed comments declaring no opposition to the requested relief by the Joint Sponsoring Parties (Calpine Comments).

¹ The signatories to the settlement agreement include Alliance for Retail Energy Markets (AReM), The California Independent System Operator (CAISO), California Large Energy Consumers Association (CLECA), Clean Coalition, Converge, Inc., Consumer Federation of California, Direct Access Customer Coalition (DACC), EnergyHub/ Alarm.com, EnerNOC, Inc., Environmental Defense Fund, Johnson Controls, Inc., Marin Clean Energy, Office of Ratepayer Advocates (ORA), Olivine, Inc., Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Sierra Club, Southern California Edison Company (SCE), and The Utility Reform Network (TURN).

² ALJ Ruling issued on January 2, 2015.

The ALJ and the assigned Commissioner presided over a prehearing conference on January 12, 2015 allowing parties an opportunity to discuss the requested modifications, address questions regarding the modifications, and request clarifications regarding D.14-12-024.

2. Proposed Modifications to D.14-12-024

This decision addresses six requests for modifications to D.14-12-024 and one omission to D.14-12-024. These are discussed in detail in the following two subsections.

2.1. Joint Sponsoring Parties' Requested Modifications

The Joint Sponsoring Parties request that D.14-12-024 be modified as follows:

1. To state that, as a contested settlement and with the material modifications made by D.14-12-024, the Agreement cannot be considered a binding settlement, but instead is to be treated as a Joint Proposal of the Joint Sponsoring Parties.
2. To reflect this treatment in the Commission's discussion of the Agreement and to add a Finding of Fact and a Conclusion of Law to confirm this treatment.
3. To replace the words "Settlement" or "Settlement Agreement" in the discussion following identification of this treatment and in any Finding of Fact, Conclusion of Law, and in all Ordering Paragraph's with the term "Joint Proposal."
4. To modify Ordering Paragraph 1 of D.14-12-024 to include two subparts to read as follows, with changes shown in bold or bold strike-through:
 - 1.a. ~~Pursuant to Commission Rules of Practice and Procedure 12.4(c)~~ **Based on the Motion for Adoption of Settlement Agreement filed on August 4, 2014, the Commission considered the Agreement appended to**

that Motion as modified in OPs 3, 4, 5, and 6, between and among the following parties (in alphabetical order): Alliance for Retail Energy Markets, The California Independent System Operator, California Large Energy Consumers Association, Clean Coalition, Comverge, Inc., Consumer Federation of California, Direct Access Customer Coalition, EnergyHub/ Alarm.com, EnerNOC, Inc., Environmental Defense Fund, Johnson Controls, Inc., Marin Clean Energy, Office of Ratepayer Advocates, Olivine, Inc., Pacific Gas and Electric Company, San Diego Gas & Electric Company, Sierra Club, Southern California Edison Company, and The Utility Reform Network. **However, because the Agreement, while signed by most but not all active parties to the proceeding, was a contested agreement and because we order modifications to several material terms of the Settlement Agreement and because the signatories did not accept the modifications but asked that we admit the terms of the proposed settlement in the record pursuant to Rule 12.6, the Settlement Agreement shall be treated as a Joint Proposal of the sponsoring parties and not an agreement binding on its signatories or this Commission.**

- 1.b. The terms of the Joint Proposal shall be admitted into evidence and its terms shall be adopted by the Commission for purposes of resolving issues identified in Phase 3 of this proceeding, except as otherwise modified in Ordering Paragraphs 3, 4, 5, and 6.**
5. To add the following Conclusion of Law: “It is reasonable and consistent with Commission precedent to characterize and treat the Settlement Agreement as a Joint Proposal and to admit the Joint Proposal into evidence in order to augment the record in this proceeding.”
6. To add the following Conclusion of Law: “The treatment of the Settlement Agreement as a Joint Proposal preserves

any rights the parties may otherwise have to petition for clarification of D.14-12-024, or modification or rehearing of those aspects of the Joint Proposal which the Commission altered in D.14-12-024.”

2.2. Inadvertent Omission to D.14-12-024 and Typographical Errors

The Commission has become aware of an inadvertent omission in D.14-12-024. The Decision approves a demand response study, discusses funding for the study, and includes language approving an extension for funding through December 31, 2016. However, an ordering paragraph authorizing the funding extension was inadvertently omitted.

Additionally, there are two typographical errors in D.14-12-024. First, on page 28, the first sentence is missing the word, “flow.” Second, the term, “load-sharing,” used twice on page 46 should be corrected to the term, “load-serving.”

3. Discussion and Analysis

We find it reasonable to modify D.14-12-024 to treat the Settlement Agreement as a Joint Proposal, as requested by the Joint Sponsoring Parties. We address the specific modifications requested by the Joint Sponsoring Parties below. Furthermore, we also find it reasonable to add the previously omitted ordering paragraph extending funding for the Study approved in D.14-12-024 and to correct the two typographical errors.

3.1. Joint Sponsoring Parties’ Requested Modifications

In the December 22, 2015 letter to the Commission, in compliance with D.14-12-024, Ordering Paragraph 2, the Joint Sponsoring Parties contend that they must request other relief through these modifications because they could not reach consensus on whether the Commission’s changes to the material terms

of the original Settlement Agreement in D.14-12-024 are acceptable to each Joint Sponsoring Party.³

While the Joint Sponsoring Parties acknowledge and accept that D.14-12-024 represents the Commission's resolution of Phase 3 issues in this proceeding, they are also "committed to engage in best efforts to achieve the directives" of the decision.⁴ However, the Joint Sponsoring Parties explain that Condition 10 of the Settlement Agreement voids the Settlement Agreement if a Commission Decision "contains any material change to the Settlement Agreement unless all of the Settling Parties agree in writing to such changes."⁵ Because the Settling Parties could not agree to the modifications of D.14-12-024 as a group, they request the Commission to treat the contested settlement as a joint position of the sponsoring parties so that the record of D.14-12-024 is preserved but the rights of individual parties are respected.

Finally, the Joint Sponsoring Parties argue that treating a contested settlement as the "joint position of the sponsoring parties" previously occurred in D.11-12-053 at 75 and D.07-03-044 at 13 (both quoting D.02-01-041 at 13). In those decisions, the Commission stated that a contested settlement "is merely the joint position of the sponsoring parties."

Calpine Corporation, the sole party opposing the original Settlement Agreement, does not oppose the requested modifications as they see the

³ Compliance Letter at 2.

⁴ *Ibid.*

⁵ *Ibid.*

modifications as neither delaying the effectiveness of D.14-12-024 nor modifying its requirements.⁶

We find it is reasonable to treat the contested settlement as a joint position of the Joint Sponsoring Parties as it moves the Commission forward in its goal to enhance the role of demand response in meeting California's resource planning needs and operational requirements. Accordingly, we modify D.14-12-024 to explain and confirm this treatment. We further find that a Finding of Fact and a Conclusion of Law are also necessary in D.14-12-024 to confirm this treatment. Therefore, it is necessary to revise the language in D.14-12-024 for clarification of this matter. However, as discussed below, there are two language revisions requested by the parties which we decline to adopt.

First, we decline to adopt the proposed additional Ordering Paragraph 1.b. We find it unnecessary because the Settlement Agreement is already in the record of this proceeding as a formal filing. All references to the words, "Settlement Agreement," in the record of this proceeding will be revised to be, "Joint Proposal."

Furthermore, we also do not find it necessary to add a Conclusion of Law regarding the rights of parties, as requested by the Joint Sponsoring Parties. The proposed new Conclusion of Law is repetitive of parties' existing rights regarding petitioning for clarification, modification, or rehearing. Thus we decline to revise D.14-12-024 to add a Conclusion of Law that already exists.

⁶ Calpine Comments at 1.

3.2. Inadvertent Omission to D.14-12-024 and Typographical Errors

D.14-12-024 discusses the proposal by parties to perform a study to examine the potential of demand response in California (Study).⁷ D.14-12-024 explains that a prior decision regarding demand response budgets for 2014-2016 programs and activities, D.12-04-045, approved funding for a similar study which has not been undertaken at this time.⁸ On page 21, D.14-12-024 further discussed this funding and stated that “because the Study will not be completed until after the expiration of the original authorization for the funds, we approve an extension for these funds through December 31, 2016.” However, an ordering paragraph authorizing the extension was inadvertently omitted.

It is reasonable to add an ordering paragraph authorizing the extension of funding for the Study because D.14-12-024 stated the intention to approve such funding through December 2016.

The Commission has discovered typographical errors on pages 28 and 46 of D.14-12-024. The first error is in the sentence beginning on page 27 and continuing on page 28, which states: “Furthermore, once that adoption occurs, the rules will automatically and immediately to this proceeding.” There is a missing verb near the end of the sentence. The sentence should read, “...automatically and immediately flow to this proceeding.” Thus, the word, “flow,” should be added to the sentence. The second error, on page 46, is the inadvertent use of the word, “load-sharing,” instead of “load-serving.”

⁷ D.14-12-024 at 18.

⁸ *Id.* at 18 and Footnote 22.

The errors on pages 28 and 46 are typographical in nature and would routinely be corrected in an Executive Order Correcting Error. We correct them here to conserve Commission resources. It is reasonable to correct the typographical errors on pages 28 and 46 of D.14-12-024.

4. Conclusion

D.14-12-024 will be modified as follows:

1. An additional section, Section 4.4. Modifying the Settlement Agreement to be a Joint Proposal, will be added to describe the treatment of the Settlement Agreement as a Joint Proposal.
2. A new Finding of Fact will be added to the decision, which determines that this treatment has been approved previously by the Commission.
3. A new Conclusion of Law will be added to the decision, which concludes the reasonableness of this treatment.
3. Ordering Paragraph 1 shall be revised to approve the treatment of the Settlement Agreement as a Joint Proposal.
4. All references to the words, "Settlement Agreement" in the remaining Ordering Paragraphs will be revised to "Joint Proposal" and all references to the words, "Settling Parties" will be revised to "Joint Sponsoring Parties."
5. Ordering Paragraph 2 will be deleted and replaced with a new ordering paragraph authorizing a funding extension for the Study.
6. The typographical errors on pages 28 and 46 will be corrected.

5. Comments on Proposed Decision

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to reduce the 30-day public review and comment period required by Section 311 of the Public Utilities Code to 17 days. No comments were filed.

6. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ in this proceeding.

Findings of Fact

1. The Joint Sponsoring Parties request other relief through modifications because they could not reach consensus on whether the Commission's changes to the material terms of the original Settlement Agreement in D.14-12-024 are acceptable to each Joint Sponsoring Party.

2. Condition 10 of the Settlement Agreement voids the Settlement Agreement if a Commission Decision "contains any material change to the Settlement Agreement unless all of the Settling Parties agree in writing to such changes."

3. Treating a contested settlement as the "joint position of the sponsoring parties" previously occurred in D.11-12-053, D.07-03-044 and D.02-01-041.

4. Calpine Corporation, the sole party opposing the original Settlement Agreement, does not oppose the requested modifications by the Joint Sponsoring Parties.

5. It is not necessary to modify D.14-12-024 to add the proposed Ordering Paragraph 1.b because the Settlement Agreement is already in the record of this proceeding as a formal filing.

6. It is not necessary to add a Conclusion of Law regarding the rights of parties because the rights already exist.

7. Two errors of a typographical nature are present on pages 28 and 46 of D.14-12-024.

Conclusions of Law

1. It is reasonable to treat the contested settlement as a joint position of the Joint Sponsoring Parties because it moves the Commission forward in its goal to

enhance the role of demand response in meeting California's resource planning needs and operational requirements.

2. It is reasonable to modify D.14-12-024 to explain and confirm the treatment of the Settlement Agreement as a Joint Proposal.

3. It is reasonable to add an ordering paragraph authorizing the extension of funding for the Study approved in D.14-12-024, because D.14-12-024 stated the intention to approve such funding through December 2016.

4. It is reasonable to conserve Commission resources and correct the typographical errors on pages 28 and 46 through this decision.

O R D E R

IT IS ORDERED that:

1. The following new section is added to Decision 14-12-024:

Section 4.4. Modifying the Settlement Agreement to be a Joint Proposal

Given the breadth and magnitude of the changes to the Settlement Agreement made herein and as further explained below, we find it reasonable to revise the "Settlement Agreement" to be a "Joint Proposal" of the Joint Sponsoring Parties (formally, the Settling Parties) and shall be referred to as the "Joint Proposal." We reiterate that the Joint Proposal, as previously discussed and modified by this decision, is reasonable and should be adopted by the Commission along with the modifications.

Because the Settlement Agreement was a contested agreement and because this decision orders modifications to several material terms, we formally revise all references to this document in the record and now refer to it as a Joint Proposal and therefore the agreement is no longer binding on its signatories." This is consistent with other Commission decisions that treat a contested settlement as a joint position of the parties, e.g., D.11-12-053, D.07-03-044 and D.02-01-041.

2. A new Finding of Fact is added to Commission Decision 14-12-024:

Prior Commission Decisions D.11-12-053, D.07-03-044, and D.02-01-041 have treated a contested settlement as a joint position of the parties.

3. A new Conclusion of Law is added to Commission Decision 14-12-024:

It is reasonable and consistent with prior Commission decisions to characterize and treat a settlement agreement as a joint proposal.

4. Ordering Paragraph No. 1 of Commission Decision 14-12-024 is revised as follows:

Based on the Motion for Adoption of Settlement Agreement filed on August 4, 2014, the Commission considered the Agreement appended to that Motion between and among the following parties (in alphabetical order): Alliance for Retail Energy Markets, The California Independent System Operator, California Large Energy Consumers Association, Clean Coalition, Comverge, Inc., Consumer Federation of California, Direct Access Customer Coalition, EnergyHub/Alarm.com, EnerNOC, Inc., Environmental Defense Fund, Johnson Controls, Inc., Marin Clean Energy, Office of Ratepayer Advocates, Olivine, Inc., Pacific Gas and Electric Company, San Diego Gas & Electric Company, Sierra Club, Southern California Edison Company, and The Utility Reform Network. However, because the Agreement, while signed by most but not all active parties to the proceeding, was a contested agreement and because we order modifications to several material terms of the Settlement Agreement, the Settlement Agreement shall be treated as a Joint Proposal of the sponsoring parties and not an agreement binding on its signatories. All references to the words, "Settlement Agreement" in the record of this proceeding, including the Motion for Adoption of Settlement Agreement shall be revised to "Joint Proposal."

5. All references to "Settlement Agreement" in Ordering Paragraph No. 3 through No. 7 of Commission Decision 14-12-024 are revised to "Joint Proposal."

6. Ordering Paragraph No. 2 of Commission Decision 14-12-024 is deleted and replaced with the following is revised as follows:

The funding for the purpose of performing studies, as authorized in Commission Decision 12-04-045, Ordering Paragraph No. 72, is hereby extended through December 31, 2016.

7. The following two typographical errors in Decision 14-12-024 are corrected as follows:

- i. On pages 27-28, the sentence beginning with the words, “[f]urthermore, once that adoption occurs...” is revised to include the word, “flow,” after the word, “immediately.”
 - ii. On page 46, the word “load-sharing” is revised to the word, “load-serving,” in both instances of its use on this page.
8. Rulemaking 13-09-011 remains open.

This order is effective today.

Dated _____, at San Francisco, California.